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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2010 - 567

12 **MARY RHATIGAN**
13 **159 Mangano Circle**
14 **Encinitas, CA 92024**
Registered Nurse License No. 281540

ACCUSATION

15 Respondent.

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17
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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about August 31, 1977, the Board of Registered Nursing issued Registered
25 Nurse License Number 281540 to Mary Rhatigan (Respondent). The Registered Nurse License
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 August 31, 2011, unless renewed.
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1 person who holds a license, upon the ground that the applicant or the licensee has
2 been convicted of a crime substantially related to the qualifications, functions, and
3 duties of the licensee in question, the record of conviction of the crime shall be
4 conclusive evidence of the fact that the conviction occurred, but only of that fact, and
the board may inquire into the circumstances surrounding the commission of the
crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

5 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
6 and 'registration.'

7 9. Section 2761 of the Code states:

8 The board may take disciplinary action against a certified or licensed
nurse or deny an application for a certificate or license for any of the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
10 following:

11 ...

12 (f) Conviction of a felony or of any offense substantially related to the
13 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

14 ...

15 10. Section 2762 of the Code states:

16 In addition to other acts constituting unprofessional conduct within the
17 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
person licensed under this chapter to do any of the following:

18 ...

19 (b) Use any controlled substance as defined in Division 10 (commencing
20 with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
21 in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety to
the public the practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription,
23 consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of, or falsification of a
24 record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

25 11. California Code of Regulations, title 16, section 1444, states:

26 A conviction or act shall be considered to be substantially related to the
27 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
28 manner consistent with the public health, safety, or welfare....

12. California Code of Regulations, title 16, section 1445(b), states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(January 23, 2008 Conviction for DUI on November 7, 2007)

14. Respondent subjected her license to discipline under sections 490, 2761, subdivision (f) and 2762, subdivision (c) of the Code in that she was convicted of a crime that involves the consumption of alcoholic beverages and that is substantially related to the qualifications, functions and duties of a registered nurse. The circumstances are as follows:

a. On or about January 23, 2008, in a criminal proceeding entitled *People of the State of California v. Mary Carol Rhatigan*, in San Diego County Superior Court, Case No. CN237930, Respondent was convicted on her plea of guilty plea for violating Vehicle Code Section 23152(b) with an enhancement under Vehicle Code Section 23578 for blood alcohol level of .15 or more.

b. As a result of the conviction, on or about January 23, 2008, Respondent was sentenced to probation which included 125 hours of community service, completion of the First Conviction Program and the MADD Victim Impact Panel and payment of fees and restitution in the amount of \$1955.00, among other things.

c. The facts that led to the conviction were that on or about November 7, 2007, after leaving work, Respondent was driving in the City of Carlsbad. She struck the center median and was weaving between lanes in the area of Melrose Drive and Rancho Santa Fe Road. Police observed Respondent "lane straddling" and initiated an enforcement stop. Initially, Respondent made no attempt to yield to the right but eventually attempted to park on the shoulder of Saxony Road. After Respondent stopped her vehicle on the shoulder, the police officer attempted to exit the police unit when he noticed that Respondent was backing her vehicle into his unit. The police officer honked both his vehicle's horn and the air horn in an attempt to stop Respondent from backing into the police unit. Despite the noise from both horns, Respondent did not stop her vehicle and instead, struck the front of the police unit. When the police officer got out of his police unit and approached Respondent's vehicle, she began to drive the vehicle forward and only stopped her vehicle after the police officer ordered her to stop. Respondent initially submitted to a PAS with a Blood Alcohol Content of .227.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Use of Alcoholic Beverages)

15. Respondent is subject to disciplinary action under Code section 2762, subdivision (b) for unprofessional conduct in that she used alcoholic beverages to an extent or in a manner that was dangerous to herself and the public when on November 7, 2007, Respondent drove under the influence of alcohol as is more fully set forth in paragraph 14 above.

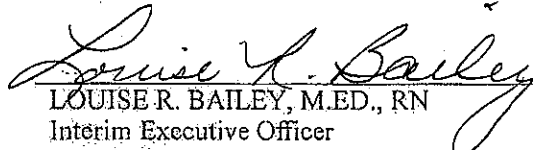
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 281540, issued to Mary Rhatigan;
2. Ordering Mary Rhatigan to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/3/10


LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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